IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16869 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VAJYABEN BHAGUBHAI & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR JITENDRA M PATEL for Petitioner No(s).: 1,2.
MR PR ABICHANDANI AGP for Respondent No(s).: 1.
None for Respondent No(s).: 2.
MR AMIT V THAKKAR for Respondent No(s).: 3,4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/08/2005

ORAL JUDGMENT

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1. In the present petition, the petitioners have challenged the order passed by the Additional Chief Secretary (Appeals), Revenue Department, Govt. of Gujarat

on 17/5/2005 by which the revision application filed by the Respondent Nos. 3 and 4 herein came to be allowed and the order passed by the Collector on 9/4/2003 came to be set aside. The petitioners have also challenged the order passed by the same authority dated 29th June, 2005 by which the review application filed by the petitioners came to be rejected.

2. That the petitioner no.1 herein became the owner of the land bearing Survey No.34 of Village Rundh, Taluka: Choryasi, District:Surat pursuant to a will made by its erstwhile owner. Entry in this regard was made in the revenue records on 11/10/1980. The name of the husband of the petitioner no.1-Bhagubhai Sukhabhai who is petitioner no.2 was entered into revenue records on 31/5/1982. Both the petitioners sold 13 gunthas of the land to Respondent Nos. 3 and 4 by registered sale deed dated 19/8/1983, entry in this regard was made in the revenue records being Entry No.566 dated 20th September, 1986. It appears that Mamlatdar initiated proceedings under Section 84 (C) of the Bombay Tenancy and Agricultural Lands Act for the land in question and by an order dated 15/3/1993 he was pleased to declare that there has been a breach of the provisions of Bombay

Prevention of Fragmentation and Consolidation of Holdings Act. He, therefore, ordered the land to be forfeited and to vest in the Government. It may be noted that the Respondent Nos. 3 and 4 who were purchaser of the land and were in actual possession were not heard by the Mamlatdar before passing the said order on 15/3/1993. Thereafter the Collector instituted suo-motu proceedings in the year 2002 seeking to review the earlier entry no.566 made in favour of Respondent Nos. 3 and 4. By an order dated 9/4/2003 the Collector ordered deleting of the Entry No.566 primarily on the basis of the order passed by the Mamlatdar on 15/3/1993 under Section 84 (C) under the Bombay Tenancy and Agricultural Lands Act. Respondent Nos. 3 and 4 herein, therefore, approached the State Government by filing a revision application against the order passed by the Collector on 9/4/2003. The revision application came to be allowed by an order dated 17/5/2005. Review application filed by the petitioners came to be rejected on 29/6/2005.

3. In the order dated 17/5/2005, the Additional Chief Secretary found that it is not proper to initiate proceedings after such a long time when the entry no.566 was made on 20th September, 1986 on the basis of a sale

deed. It was further observed that powers to take action for breach of provisions of Section 66 and 67 of the Revenue Code would lie with the Taluka Development Officer, Choryasi. The order passed by the Collector was, therefore, set aside.

4. From the above recording of the events, it can be seen that the Respondent Nos. 3 and 4 were sold the land by the petitioners herein by a registered sale deed way back in the year 1986. The Mamlatdar initiated the proceedings and came to a conclusion under the Bombay Tenancy and Agricultural Lands Act declaring the sale deed as illegal without hearing Respondent Nos. 3 and 4. No proceedings under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act had preceded the order passed by the Mamlatdar. In any case such an order would not bind the Respondent Nos. 3 and 4 since admittedly they were never heard before the Mamlatdar passed the said order. The names had appeared in the revenue entries on the basis of registered sale deed. The Collector sought to review the entries made in the year 1986 by initiating proceedings in the year 2002. The Additional Chief Secretary, therefore, rightly interfered with the order passed by the Collector, since

the sole basis for the Collector to pass the order on 9/4/2003 was the order passed by the Mamlatdar on 15/3/1993 under the provisions of Section 84 (C) of the Bombay Tenancy and Agricultural Lands Act. It is true that the Additional Chief Secretary has perhaps some what erroneously recorded that the order passed by the Mamlatdar on 15/3/1993 pertains to some other land. This however would not change the complexion of the order passed by the Additional Chief Secretary, since I find that the order passed by the Mamlatdar was without ever hearing the Respondent Nos. 3 and 4 who were vitally interested parties. The petitioners who had sold the land through a registered sale deed and had not taken any steps thereafter to question the same, cannot agitate the question of entries especially in view of the fact that the order passed by the Mamlatdar would not bind the Respondent Nos. 3 and 4 herein. Learned Advocate for the petitioners submitted that the Additional Chief Secretary passed the order in the revision application without hearing the Petitioner No.2. One may notice that in the proceedings initiated by the Collector, Petitioner No.1 was joined as party and was also heard. The Respondent Nos. 3 and 4, therefore when filed the revision application before the State Government obviously joined

those persons who were parties before the Collector. No fault therefore can be attached with the Respondent Nos. 3 and 4 for not joining petitioner no. 2 as a respondent in the revision application before the State Government. In any case the petitioner no.2 is husband of petitioner no.1 and despite sufficient notice to petitioner no.1 no attempt was made by the petitioner no.2 to join himself as a party in the proceedings before the Collector. I, therefore, do not find any infirmity in the order passed by the Additional Chief Secretary. There cannot be any dispute about the proposition that the State Government could have entertained the revision application filed by the petitioners for correcting apparent or clerical or typographical errors. Turning down the review application on merits was however, not improper. Since I find that the initial order passed by the Additional Chief Secretary was just and proper, rejection of the review application filed by the petitioners also has be upheld. In the result, the petition is devoid of merits and hereby rejected.

(Akil Kureshi, J.)

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